

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Max Mehiglovesky,

Petitioner,

Civ. No. 12-768 (RHK/JJG)

ORDER

v.

Immigration Court,

Respondent.

This matter is before the Court upon the Report and Recommendation (“R&R”) of United States Magistrate Judge Jeanne J. Graham, dated March 29, 2012 (Doc. No. 2), which recommended that the Court transfer Petitioner Max Mehiglovesky’s application for habeas corpus relief to the Eighth Circuit Court of Appeals. The Magistrate Judge noted that Petitioner challenges the removal order entered against him in immigration proceedings and that “a petition for review to the courts of appeal is the exclusive means of review of an administrative order of removal, deportation, or exclusion.” (R&R at 3 (quoting Tostado v. Carlson, 481 F.3d 1012, 1014 (8th Cir. 2007).)

Both Petitioner and the Government have filed Objections to the R&R. In his Objections, Petitioner asserts that he does not want his Petition transferred to the Court of Appeals, but rather prefers to have the Petition “close[d] or dismiss[ed].” (Doc. No. 6.) The Government contends that while the Magistrate Judge correctly determined that the Court of Appeals (and not this Court) is the appropriate tribunal to consider the Petition, this action cannot be transferred because Petitioner did not administratively appeal his

removal order and, under 8 U.S.C. § 1252(d)(1), a “court may review a final order of removal only if . . . the alien has exhausted all administrative remedies.” (Doc. No. 5 at 2.) Instead, the Government posits that this action must be dismissed. (Id.)

The upshot of the foregoing is that all parties agree this action should be dismissed at this juncture. Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** that the Report and Recommendation (Doc. No. 2) is **ADOPTED IN PART** and Mehiglovesky’s Petition (Doc. No. 1) is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 16, 2012

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge